



## ZONING BOARD OF APPEALS

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ZBA 2014-24  
 Petition of Alexis Kissam  
 77 Russell Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 3, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of ALEXIS KISSAM requesting a Variance pursuant to the provisions of Section XIVE, Section XIX, and Section XXIV of the Zoning Bylaw for demolition of an existing nonconforming structure and construction of a new structure with less than required front and right side yard setbacks, at 77 RUSSELL ROAD, in a 10,000 square foot Single Residence Water Supply Protection District.

On March 17, 2014, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Mark Kablack, Esq., representing Alexis Kissam, (the "Petitioner"), Les Litwinczyk, and Jim Zegowitz, Architect. Also present was Ethan Parsons, Assistant Planning Director.

Mr. Kablack said that this property fronts on Russell Road and the rear of the property backs onto Morses Pond. He said that the property is very challenged in terms of topography, particularly halfway back into the property where the elevation changes 25 feet over 50 feet in distance. He said that the property is located in a Water Supply Protection District and is subject to the Wetlands Protection Act.

Mr. Kablack said that the proposal is to take an existing nonconforming house down and reconstruct it. He said that the existing house was built approximately 100 years ago. He said that the structure, systems and retaining walls are beginning to fail. He said that it is not functional for the purposes of a young growing family. He said that there is a spiral staircase at the entry level that leads down to the bedrooms on the lower level, which is not practical for young children.

Mr. Kablack said that the plan is to reconstruct the home on this property in a manner that is sensitive to the neighborhood. He said that they received and submitted an Order of Conditions from the Wetlands Protection Committee (WPC). He said that the elevation drop off as you get close to Morses Pond coupled with the protections of the Wetlands Protection Act have forced the home to be closer to Russell Road than what conforming front yard setbacks would allow. He said that the proposed home was designed to work with the outline of the current footprint. He said that the new house will be no closer to Russell Road than the existing home.

Mr. Kablack said that the property slopes severely at the back. He said that is a good example of unique conditions of topography that warrant granting of a variance. He said that the soils are relatively unique on this property due to their hydric nature as you go down the slope and get closer to Morses Pond.

Mr. Kablack said that, although the proposed footprint is not exactly the same as the existing footprint, it will not exceed the current setbacks.

Mr. Kablack said that the proposed project will have no detrimental impact to the community. He said that other lots in this area have presented similar but not exact site constraints for which the Board has granted relief, either in the form of a variance or a special permit.

Mr. Kablack said that the home will meet the side yard setback on the south side or left side. He said that it will meet the rear yard setbacks. He said that the setback on the north or right side is deficient by 2.8 feet. He said that the existing setback there is 17 feet and the proposed setback will be 17.2 feet. He said that the original home was slightly skewed to Russell Road. He said that the proposed home will be squared to Russell Road.

The Board said that the proposed house has over 4,200 square feet, which is a huge house for this lot. Mr. Kablack said that the house will have a front entry two-car garage. He said that they will be able to park four cars on property. He said that all occupants of the home as well as visitors will be able to park on-site, which is not possible with the existing condition. He said that the two-car garage somewhat dictated the width of the proposed house.

Mr. Zegowitz said that the proposed house will maintain the right side yard and front yard setbacks. He said that they pushed the garage back one foot. He said that the current site slopes to the pond. He said that the house is down three to four feet and 17 feet from the front to the back. He said that they had to design the house to stay out of the 25 foot buffer zone. He said that the width of the house was designed for a two-car garage, a nice entrance, a powder room and a coat room, and stairs up and down throughout the house, which is a primary design feature to take advantage of the topography.

Mr. Zegowitz said that there will be a stairway down to the living room and kitchen areas. He said that a stairway will lead up to a second floor with a master suite and closets. He said that the same staircase will lead to the basement where there will be two bedrooms and two bathrooms.

Mr. Zegowitz said that the design of the house was laid out for vertical circulation to fit in with the existing topography with the exception of the area where the plunge pool and patio will replace an existing deck. He said that the intent was to engage the site as is and to not modify the topography. He said that every level will be at grade with the exception of the upper level.

Mr. Kablack said that the house was designed into the slope to minimize massing from the street. Mr. Zegowitz said that the front of the house will be just under 24 feet. He said that it follows the topography down to the back yard. Mr. Zegowitz said that the height from average grade will be approximately 28 feet.

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The Board said that the 4,452 square feet of finished floor area does not appear to be that large. Mr. Zegowitz said that the basement level is 1,347 square feet, the first floor is 1,477 square feet, and the second floor is 1,628 square feet.

The Board said that house will not have to go through Large House Review (LHR) because of the need for a variance. The Board said that it would apply LHR standards. The Board said that the proposed house is well beyond the threshold for LHR in a 10,000 square foot district. The Board asked if the Planning Board had addressed that issue. Mr. Parsons said that the Planning Board had no comments about the scale of the house. He said that the scale of the building is only one of the six considerations for LHR.

The Board said that Total Living Area plus Garage (TLAG) calculations were not submitted to the Board. Mr. Parsons said that TLAG and Total Living Area (TLA) are not the same. He said that the TLA is typically inflated over TLAG. He said that only fractions of basements typically count. He said that a portion of this is a three-story house. He said that if it did trigger LHR, the Planning Board would consider the scale of the structure.

The Board asked if the WPC considered the overhang of the rear balcony over the 25 foot buffer area. Mr. Kablack said that the plan set was referenced in the Order of Conditions. He said that he confirmed with the Architect that, although the dates on the plan sets are different, they are the same plans that were submitted to the WPC.

The Board asked if a cantilevered deck could be constructed without temporary supports or workers needing to go into the 25 foot no disturb zone. Mr. Zegowitz said that they discussed that with the WPC. He said that the plans show two or three column locations for which they will have to hand dig for installation of the posts.

The Board said that it was concerned with the construction of the cantilevered deck. The Board said that the Order of Conditions states that they cannot do anything in the 25 foot no disturb zone. The Board questioned how it could be built. Mr. Litwinczyk said that when they originally designed the house, the intention was to have a cantilevered deck without supports. He said that there was a question later on about what will happen if they cannot engineer such a deck. He said that the WPC said that they would allow hand digging for three sona tubes for three concrete posts to support the deck. The Board said that there is nothing in the Order of Conditions that permits that.

The Board said that it would like to see the TLAG calculations and the square footage of the existing house.

The Board voted unanimously to continue the petition to April 10, 2014.

The hearing was rescheduled to April 15, 2014.

#### April 15, 2014

Presenting the case at the hearing were Mark Kablack, Esq., representing Alexis Kissam, (the "Petitioner"), Les Litwinczyk, and Jim Zegowitz, Architect.

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Mr. Kablack said that the Order of Conditions granted a waiver for limited work in the no build zone with respect to the lally columns.

Mr. Kablack said that Total Living Area plus Garage (TLAG) calculations were submitted on April 10, 2014. He said that the proposed home has a TLAG calculation of 4,016 square feet, which is 400 square feet over what would otherwise trigger Large House Review (LHR).

Mr. Kablack said that the Board had asked about the size of the existing home at the previous hearing. He said that it is a two-story home but as you enter from Russell Road the property pitches down so that there is approximately 2,176 square feet of living area on the first floor and on the floor below.

Mr. Kablack said that they looked at the bylaw provisions and standards for LHR. He displayed a plan (retained by proponent) that was reviewed and approved by the WPC. The plan showed the proposed home, new vegetation that was required by the WPC, including new lawn area over the existing drive, proposed trees and shrubs, stabilization ground cover at the border of the pond, and trees and shrubs that the WPC required to be retained.

Mr. Kablack said that the WPC was concerned about roof runoff and stormwater drainage. He said that the proposed plans will substantially improve runoff with a perimeter roof drain that will handle the entire structure and some surface water and infiltrate it to a catch basin and trenches.

Mr. Kablack said that the scale of the home is not unlike a two-story colonial without the pitched roof. He said that it will be approximately 40 feet wide, 20 feet of which will be the garage. He said that the property pitches down dramatically from Russell Road. He said that the benefit of designing the home into the slope is that there is additional living area in the walk out basement that will not be viewable from the roadway.

Mr. Kablack said that there is no proposal to do any significant lighting on the property other than at the entrances for safety purposes.

Mr. Kablack said that with the new plan they will be able to park four cars on the site and that will improve access on Russell Road.

Mr. Kablack discussed open space protection. He said that the most immediate natural resource here is the pond. He said that the WPC conducted a thorough review to protect the resource area.

Mr. Kablack said that Mr. Zegowitz worked with the homeowner to make a home that will fit into this neighborhood.

The Board asked if there is a comparison of the hardscape for the existing and proposed house and driveway. Mr. Kablack said that the site plan shows the footprint of existing and proposed homes. Mr. Zegowitz displayed on the site plan the location of the existing and proposed driveways. The Board said that there will be less bituminous driveway with the new home. The Board said that the area of impervious surface including the roof should be almost the same.

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Mr. Litwinczyk said that there are existing wooden patios and retaining walls. He said that the plan is to replace the patios with concrete with pavers that will be roughly the same size. The Board said that the proposed house will mitigate runoff with a drainage trench and drywell. Mr. Zegowitz said that there is currently nothing there now.

The Board said that the house appears to have a lot of interior finishings that will require a number of workers to be on-site. The Board asked about plans to lessen the impact on the neighborhood. The Board asked where the construction workers will park. Mr. Kablack said that they are not that far along in terms of construction scheduling and phasing. He said that they know that Russell Road is tight and that they will need to be pro active in scheduling when the workers arrive and where they store their equipment.

The Board discussed a condition that all contractor parking be off-site and that workers are bused in. Mr. Kablack said that the size of Russell Road almost dictates that. The Board said that it also does not want to have a number of cars coming down the road.

The Board said that a Construction Management Plan should be developed to show that travel of safety vehicles will not be inhibited. The Board said that only one concrete truck will be allowed on Russell Road at a time.

The Board said that the size of the delivery trucks should not be longer than 30 feet.

The Board said that the police department should be notified of the construction and delivery schedules, especially for large equipment.

The Board said that when they are taking away the materials from the existing house, the trucks may have to back in and face out. The Board said that there may be an issue with trying to bring in a front end loader.

The Board asked if a large amount of material will be removed. Mr. Zegowitz said that he did not have that information but there is an existing basement area. The Board asked about the size and location of the existing versus the proposed basement. Mr. Zegowitz said that the proposed basement will be lower.

The Board said that the neighborhood will be disrupted by the construction activity. The Board said that the contractor should post a contact telephone number if there are neighborhood concerns.

Mr. Kablack said that in accordance with the Order of Conditions, they will have to stabilize the site right away for stormwater. The Board said that once the bituminous driveway is built, they can park up to two vehicles there. Mr. Kablack said that there will be some staging of materials and parking on site that will all be off of Russell Road.

The Board said that none of the streets in this area are wide enough or straight enough to have curb parking. The Board said that the workers will have to find another place to park.

The Board said that, in cases where Russell Road will be temporarily blocked by deliveries, the Russell Road residents should be alerted ahead of time. The Board said that, in those instances, a police detail should be used. Mr. Kablack said that at this section of Russell Road there are only a half dozen houses.

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He said that they would prefer to coordinate with the neighbors, even for temporary disruption on Russell Road. He said that Ms. Kissam has reached out to the neighbors and everyone is in favor of the project moving forward.

The Board said that it was concerned about a medical or fire emergency while there is a large vehicle on the road. The Board said that someone has to have the authority to move the vehicle even if they are in the process of unloading it. Mr. Kablack asked if they could be allowed to try the notice to the police department and the neighbors first and then move to a police detail if there is a problem. The Board said that it was willing to try that.

#### Statement of Facts

The subject property is located at 77 Russell Road, in a 10,000 square foot Single Residence Water Supply Protection District, with a minimum front yard setback of 19.2 feet and a minimum right side yard setback of 17 feet.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIVE, Section XIX, and Section XXIV of the Zoning Bylaw for demolition of an existing nonconforming structure and construction of a new structure with less than required front and right side yard setbacks, in a 10,000 square foot Single Residence Water Supply Protection District.

Letter in support of Application for Variance, a plot plan, dated 2/12/14, stamped by Dennis B. O'Brien, Professional Land Surveyor, a Site Plan, dated 3/10/14, and Proposed Floor Plans and Elevation Drawings, dated 3/10/14, stamped by Andrew T. Zalewski, Registered Architect, Letter to Zoning Board of Appeals, dated 4/10/14, from Mark A. Kablack, re: Application for Variance, TLAG calculations with plans, dated 4/7/14, prepared by the MZO Group, and photographs were submitted.

On January 30, 2014, the Wetlands Protection Committee issued Order of Conditions, MassDEP File #:324-0729.

On March 25, 2014, the Planning Board reviewed the petition and recommended that the variance to the front yard requirement be granted.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that a variance may be granted from the terms of the Zoning Bylaw with respect to side yard and front yard setbacks on the northerly and easterly sides of the property at 77 Russell Road as the Board found that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to the topography of this lot, especially affecting this land but not generally affecting the zoning district in which it is located; and that the hardship has not been self-created. The Board found that desirable relief may be granted without

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substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted to allow for demolition of an existing nonconforming structure and construction of a new structure with less than required front and right side yard setbacks, in a 10,000 square foot Single Residence Water Supply Protection District, subject to the following conditions:

1. A sign that is at least two feet by two feet shall be erected at the front of the property bearing the name and telephone number of the contractor and any other emergency numbers for people to reach the owners of the property.
2. No box trailers longer than 30 feet shall be utilized to deliver materials to the property.
3. There shall be only one delivery vehicle at a time on Russell Road.
4. All workers on the property, whether employees of the contractor or any subcontractor, shall not park on Russell Road or surrounding streets.
5. During construction, the owners shall provide off-site parking and small vehicle busing to the site.
6. When construction commences or when equipment deliveries, box trailer deliveries and things of that nature are to be made, the Wellesley Police shall be given 24 hour advance notice.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

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APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman



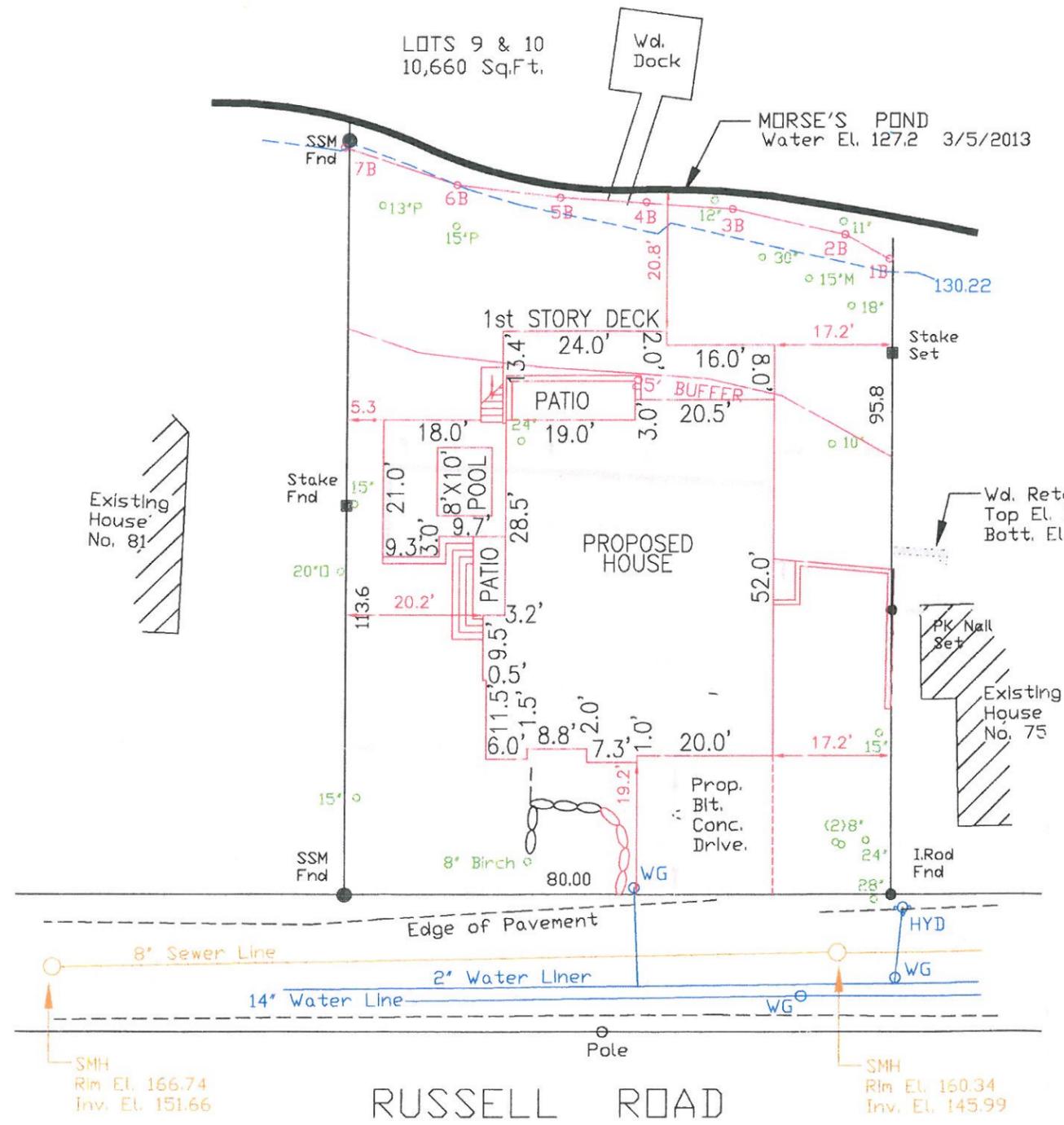
David G. Sheffield



Derek B. Redgate

cc: Planning Board  
Inspector of Buildings  
lrm

	REQUIRED	EXISTING	PROPOSED
Area	10,000 S.F.	10,660 S.F.	10,660 S.F.
Frontage	60 Ft.	80.0 Ft.	80.0 Ft.
Front Yard	30 Ft.	19.2 Ft.	19.2 Ft.
Side Yard	20 Ft.	17.0 Ft.	17.2 Ft.
Rear Yard	10 Ft.	41.6 Ft.	20.8 Ft.
Lot Coverage	25%	10.8%	19.3%



NOTE: Bank flagged by Norse Environmental 10/8/2013

NOTE: All plan elevations are Town of Wellesley Datum (6.22' above NAVD 1988)

NOTE: Per FEMA map #25021C0012 shows 100- year flood elevations at 124.0 NAVD 1988 (130.22 Town of Wellesley)

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## PLAN SHOWING PROPOSED HOUSE IN WELLESLEY, MASS.

Norfolk County

Scale: 1" = 20      February 12, 2014

Dennis O'Brien      P.L.S.

31 Hayward Unit 3-G      Franklin, Mass. 02038

( 508 ) 541 - 0048

  
*Dennis O'Brien*  
 Dennis O'Brien      P.L.S.

